

CERTIFICATE OF MAILING

I hereby certify that this paper is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to the Comm. of Patents and Trademarks Washington, D.C. 20231 on December 1, 1997.

Harry M. Cross, Jr. Reg. No. 22,229

Attorneys Docket No. 95-02-02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re application of

John D. Werre

Serial No. 08/538,279

Filed 10/02/95

For: Telescope Mounting Alignment Bars

Examiner:

Art Unit: 3108

PETITION TO REVIVE APPLICATION UNDER 1.137(a)

Hon. Comm. of Patents and Trademarks

Washington, D.C. 20231

Sir:

APR 7 1998

This application was ~~unavoidably~~ abandoned due to the failure of the Patent Office to send a timely response in the file, through no fault of the Applicant.

1. The enclosed Notice of Abandonment (Exh. A) indicates that a response to the Office Action of Nov. 12, 1996, was not filed.

2. However, a timely response was mailed to the Patent Office on Feb. 11, 1997, along with a Certificate of Mailing dated February 11, 1997, but misplaced by the Patent Office and not entered into the file.

3. Enclosed is a copy of that timely response (Exh. B) together with a true copy of the postcard (Exh. C) that was sent with the response and returned by the Patent Office indicating that the Patent Office had received the response.

4. Also enclosed is a Petition Fee check for \$55.00. ✓

5. Withdrawal of the abandonment and reinstatement of the application is requested.

REMARKS

When the undersigned received the Notice of Abandonment

dated June 11, 1997, the undersigned prepared and filed a Request for Reconsideration of Holding of Abandonment (MPEP 711.03) on

June 27, 1997 (Exh. D). That Request was accompanied by a postcard and a true copy of that postcard (Exh. E), indicating that the Patent Office had received the Request for Reconsideration, is enclosed.

After the postcard of Exh. E was returned to the undersigned, the postcard of Exh. C was returned to the undersigned. The undersigned emphasizes that the postcard of Exh. C was mailed to the Patent Office on Feb. 11, 1997. Why the Patent Office waited until July 2, 1997 to date stamp the postcard of Exh. C and return it to the undersigned is not known to the undersigned. It must be presumed that a Patent Office clerk found the response with the postcard still attached on or about July 2, 1997, date-stamped the postcard and remailed it back to the undersigned. Possibly the Patent Office's receipt of the Request for Reconsideration (Exh. D) triggered the discovery of the timely response and the belated mailing of the postcard (Exh. C).

On August 26, 1997, the undersigned telephoned Examiner Fulton and told him that the Request for Reconsideration had been filed. He said that the case had not been returned to him yet and that he would call me when it had been returned to him.

On October 16, 1997, not having heard from Examiner Fulton, the undersigned called Examiner Fulton again. Examiner Fulton called back on October 17, 1997 and said he could not get the file returned to him and that he had exhausted his resources and was unable to obtain the file; he suggested that I contact his supervisor. The undersigned then called Examiner Fulton's supervisor. The supervisor returned the call and said that he would try to obtain the file, but that they were having difficulty in locating files. The supervisor has not called back. Hence, this petition to revive has been prepared and filed.

It appears that, from what Examiner Fulton and his supervisor said, the file is misplaced in the Patent Office and that they are unable to locate the file.

In summary, Applicant has at all times been diligent in advancing the prosecution of his application. A timely response to the Office Action of November 12, 1996, was mailed to the Patent Office of February 11, 1997, with a Certificate of Mailing dated February 11, 1997. The Patent Office erroneously abandoned the application as a result of having misplaced the timely response. Applicant, through the undersigned diligently attempted to have the abandonment withdrawn through procedures authorized in the MPEP, all to no avail. Therefore, this petition is timely and not unduly delayed.

Withdrawal of the abandonment and reinstatement of the application is requested.

Respectfully submitted,
John D. Werre

Date: December 1, 1997

By: 

Harry M. Cross, Jr.
Reg. No. 22,229

P.O. Box 280
Missoula, MT 59806
406 728-5300



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
0875385, 275	10/02/95	WEFIRE	

HARRY M CROSS JR
P O BOX 280
MISSOULA MT 59806

F1M1/0620

EXAMINER

ART UNIT	PAPER NUMBER
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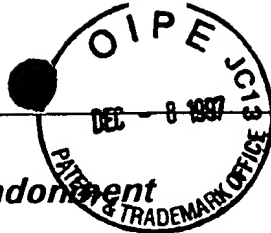
DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Exh. A.

Notice of Abandonment



Application No.
08/538,279

Applicant(s)

Werre

Examiner

Christopher W. Fulton

Group Art Unit
3108



This application is abandoned in view of:

☒ applicant's failure to timely file a proper response to the Office letter mailed on Nov 12, 1996.

☐ A response (with a Certificate of Mailing or Transmission of _____) was received on _____, which is after the expiration of the period for response (including a total extension of time of _____ month(s)) which expired on _____.

☐ A proposed response was received on _____, but it does not constitute a proper response to the final rejection.

(A proper response to a final rejection consists only of: a timely filed amendment which places the application in condition for allowance; a Notice of Appeal; or the filing of a continuing application under 37 CFR 1.62 (FWC)).

☒ No response has been received.

☐ applicant's failure to timely pay the required issue fee within the statutory period of three months from the mailing date of the Notice of Allowance.

☐ The issue fee (with a Certificate of Mailing or Transmission of _____) was received on _____.

☐ The submitted issue fee of \$_____ is insufficient. The issue fee required by 37 CFR 1.18 is \$_____.

☐ The issue fee has not been received.

☐ applicant's failure to timely file new formal drawings as required in the Notice of Allowability.

☐ Proposed new formal drawings (with a Certificate of Mailing or Transmission of _____) were received on _____.

☐ The proposed new formal drawings filed _____ are not acceptable.

☐ No proposed new formal drawings have been received.

☐ the express abandonment under 37 CFR 1.62(g) in favor of the FWC application filed on _____.

☐ the letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.

☐ the letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.

☐ the decision by the Board of Patent Appeals and Interferences rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.

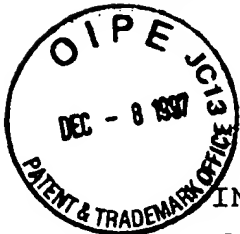
☐ the reason(s) below:

CHRISTOPHER W. FULTON
PRIMARY EXAMINER
ART UNIT 3108

CERTIFICATE OF MAILING

I hereby certify that this paper is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to the Comm. of Patents and Trademarks Washington, D.C. 20231 on February 11, 1997.

Harry M. Cross, Jr.
Harry M. Cross, Jr. Reg. No. 22,729



Attorneys Docket No. 95-02-02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

John D. Werre

Serial No. 08/538,279

Examiner: Fulton, C.

Filed 10/02/95

Art Unit: 3108

For: Telescope Mounting Alignment Bars

AMENDATORY RESPONSE TO OFFICE ACTION OF 11/12/96

Hon. Comm. of Patents and Trademarks

Washington, D.C. 20231

Sir:

In response to the Office Action of November 12, 1996,
please amend the above-identified application as follows:

IN THE CLAIMS

Amend claims 1, 5 and 6, and add new claims 7 - 9 as
follows.

--1. (Amended) A pair of telescopic sight mount aligning
bar[s] means, each bar means comprising an elongated rod having a
cylindrical inner end portion with a planar circular inner end
bounded by a circular peripheral edge having the same diameter as
the diameter of said cylindrical inner end portion, the circular
inner ends of the two bar[s] means being perpendicular to the
longitudinal axis of their respective [bars] rods, and the
circular inner ends of the two bar[s] means having substantially
identical diameters and peripheral edges so that the two inner
ends may be closely juxtaposed when used to align, and to check
the alignment of, a telescopic sight mount whereby a telescopic
sight mount misalignment will be revealed by a misalignment of
said peripheral edges relative to one another with such
misalignment being palpable to the touch of a user when the two
inner ends are closely juxtaposed, and whereby such misalignment
[and] also will be revealed by a non-parallelity between said two

Exh. B

inner ends.--

--5. (Amended) [The telescopic sight mount aligning bars of claim 1 wherein] A pair of telescopic sight mount aligning bars, each bar comprising an elongated rod having a planar circular inner end bounded by a circular peripheral edge, the circular inner ends of the two bars being perpendicular to the longitudinal axis of their respective bars, and the inner ends of the two bars having substantially identical diameters and peripheral edges so that the two inner ends may be closely juxtaposed when used to align, and to check the alignment of, a telescopic sight mount whereby a telescopic sight mount misalignment will be revealed by a misalignment of said peripheral edges relative to one another and also will be revealed by a non-parallelity between said two inner ends, at least one of said bars [is] being provided with an elongated access slot extended diametrically through said bar so as to enable access to telescopic sight mount attaching screw that would otherwise be covered by the slotted bar.--

--6. (Amended) [The telescopic sight mount aligning bars of claim 1 wherein] A pair of telescopic sight mount aligning bars, each bar comprising an elongated rod having a planar circular inner end bounded by a circular peripheral edge, the circular inner ends of the two bars being perpendicular to the longitudinal axis of their respective bars, and the inner ends of the two bars having substantially identical diameters and peripheral edges so that the two inner ends may be closely juxtaposed when used to align, and to check the alignment of, a telescopic sight mount whereby a telescopic sight mount misalignment will be revealed by a misalignment of said peripheral edges relative to one another and also will be revealed by a non-parallelity between said two inner ends; said bars [are] being cylinders having substantially uniform and identical diameters [; said bars are] and being each provided with an outer end that is knurled to provide a finger gripping surface; said bars [are] also each being provided with an annular

groove adjacent to their inner end so as to delineate an end portion that is not to be tapped when adjusting the alignment of a telescopic sight mount; and at least one of said bars [is] being provided with an elongated access slot extended diametrically through said bar so as to enable access to telescopic sight mount attaching screw that would otherwise be covered by the slotted bar.--

--7. The telescopic sight mount aligning bars of claim 5 wherein said bars are cylinders having substantially uniform and identical diameters.--

--8. The telescopic sight mount aligning bars of claim 5 wherein said bars are each provided with an outer end that is knurled to provide a finger gripping surface.--

--9. The telescopic sight mount aligning bars of claim 5 wherein said bars are each provided with an annular groove adjacent to their inner end so as to delineate an end portion that is not to be tapped when adjusting the alignment of a telescopic sight mount.--

REMARKS

Reconsideration of this application is respectfully requested.

The indication of the allowability of claims 5 and 6 is acknowledged and appreciated. These two claims have been placed in independent form, incorporating the wording of their parent claim. These claims have also been amended to correct the grammar error noted by the Examiner. Therefore, they are in condition for allowance. Withdrawal of the Sec. 112 rejection and the allowance of claims 5 and 6 is solicited. New claims 7-9 have been added to depend from allowable claim 5 and the allowance of these new claims is also solicited.

The rejection of claims 1 - 4 is respectfully traversed. These claims were rejected under Sec. 103 over page 197 of the Brownells catalog # 47 in view of Callahan and, with respect to

claims 3 and 4, in further view of Anderson. Claim 1 has been amended to define the scope bars of applicant's invention in means plus function so as to emphasize the importance of the scope bars' structure in terms of the function performed. As seen in applicant's Figs. 1, 4 and 5, the inner end portions of both scope bars (which are the ends juxtaposed to one another) are cylindrical and the juxtaposed inner ends are circular with their circular perimeter edges being of the same diameter as the diameter of the cylindrical end portions. As a consequence of this structure, when the inner end portions are juxtaposed as shown in Figs. 4 and 5, with the inner ends themselves in very close proximity to one another, any misalignment, such as is shown in Fig. 5, can be felt by the user. The user can run his or her finger along the cylindrical end portions and any misalignment can be immediately and easily felt as the user's finger runs across the gap between the two scope bars. As shown in Fig. 5, the protruding edges at "X" and "Y" can be felt by the user because the circular perimeter edge of each bar end has the same diameter as the adjacent cylindrical end portion. These circular perimeter edges are not recessed inward of the cylindrical end portions but are, rather, coincident with the cylindrical surfaces of these end portions.

In marked contrast to this structural relationship, the articles shown in the Brownells catalog have conically-tapered end portions that taper to points. These points cannot be felt by a user because they are recessed from the outer surfaces of the alignment rods. Furthermore, because they are pointed ends, the direction or angle of misalignment is very difficult to detect visually.

The Callahan reference does not meet the limitations in amended claim 1. Furthermore, there is no teaching in either the Brownells catalog or in Callahan to suggest modifying Brownells articles.

First of all, Callahan's juxtaposed elements 22, 23 are members to be aligned - they are not aligning members; the

aligning member of Callahan is element 27 and is a single shaft. The Examiner is incorrect in stating that "Callahan discloses at Column 1, lines 45-50 that it is known in the art to provide a planar end on shafts 23 to visually determine of(sic) the shafts a(sic) in alignment." The whole purpose of Callahan is to provide for automatic alignment of the two shafts as a result of using a single shaft 27 - the two shafts to be aligned, 22, 23 or 40, 43 could be of different diameters or of some other different configuration and yet, because of the use of aligning shaft 27, still become axially aligned. The planar ends of shafts 22, 23 play no part in the alignment process. Fig. 2 of Callahan shows how his alignment device would be typically used, where motor shafts 40, 43 are to be aligned. In Fig. 2 Callahan shows that motor shafts 40, 43 are typically chamfered at their outer ends; this to prevent them from being chipped or shattered. It is the single element 27 that aligns shafts 22, 23 or 40, 43; not vice versa. In other words, the ends of shafts 22, 23 or 40, 43 are not used in any alignment process, they are merely ends of two shafts that are to be aligned by other means - namely element 27.

Secondly, The Brownells scope alignment rods require the presence of pointed ends. The advertisement on page 194 states "Clamp one rod in each ring; if the points don't touch, they're out of alignment." In other words, Brownells requires pointed end so that the pointed ends can touch one another when the rods are aligned. It is not proper to ignore Brownells teaching of the importance of pointed ends and suggest that those pointed ends could be replaced by circular, planar ends, for to do so would destroy the Brownell structure and render it impossible to function as specified. Substitution of Callahan's motor shaft end configuration in place of the Brownell pointed ends would render the Brownell scope alignment rods incapable of performing as specified.

The Examiner's attempt to combine the teachings of the cited references is based on hind-sight reasoning. Likewise, the Examiner has used hind-sight reasoning in attempting to

substitute elements from one reference into another where no basis is present in either to suggest the substitution. As stated by the Court in re Sernaker, 217 USPQ 1, 6 (1983) in discussing an earlier case, "The lesson of this case appears to be that prior art references in combination do not make an invention obvious unless something in the prior art references would suggest the advantage to be derived from combining their teachings." Applicant submits that, as in the Sernaker case, the claimed invention in the present case is nonobvious over the references because there is nothing in the references that would suggest that an improvement in "a pair of telescopic sight mount aligning bar[s] means,"

whereby a telescopic sight mount misalignment will be revealed by a misalignment of said peripheral edges relative to one another with such misalignment being palpable to the touch of a user when the two inner ends are closely juxtaposed.

might be achieved by combining their teachings; nor is there anything in the references that would suggest that this improvement as a result of,

each bar means comprising an elongated rod having a cylindrical inner end portion with a planar circular inner end bounded by a circular peripheral edge having the same diameter as the diameter of said cylindrical inner end portion,

might be achieved by combining their teachings. The problems addressed by each of the references are different from the problems addressed by the other reference and also different from the problems addressed by the present invention.

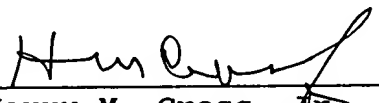
The Examiner's incorrect conclusion of obviousness appears to be the result of his failure to view the invention as a whole and each of the references as a whole. There are many cases which state the requirement that the invention must be viewed as a whole and that each of the references must also be viewed as a whole when the issue of nonobviousness is confronted. In

particular, the Examiner is not permitted to disregard disclosures in the references that diverge from and teach away from the invention at hand, W.L. Gore & Associates, Inc. v. Garlock, Inc., 220 USPQ 303, 311 (CAFC 1983).

In view of the foregoing, it is submitted that amended claim 1, and claims 2-4 dependent therefrom, patentably distinguish over the art of record. Withdrawal of the rejection of claims 1-4 and the allowance of these claims are solicited.

Respectfully submitted,
John D. Werre

Date: 2/11/97
~~January 4, 1996~~

By: 
Harry M. Cross, Jr.
Reg. No. 22,229

P.O. Box 280
Missoula, MT 59806
406 728-5300

Hon. Ass't Comm. for Patents
Washington, DC 20231

Dear Sir:

Please acknowledge receipt of the following by stamping the date of receipt on this card and mailing it.

1. Amendatory Response

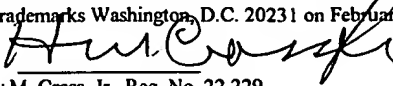


In re Application of Werre
Serial No.: 08/538,279 Filed: 10/02/95
Title: Telescope Mounting Alignment Bars
Atty File: 95-02-02
February 10, 1997

Exh. C

CERTIFICATE OF MAILING

I hereby certify that this paper is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to the Comm. of Patents and Trademarks Washington, D.C. 20231 on February 11, 1997.


Harry M. Cross, Jr. Reg. No. 22,229

Attorneys Docket No. 95-02-02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

John D. Werre

Serial No. 08/538,279

Examiner: Fulton, C.

Filed 10/02/95

Art Unit: 3108

For: Telescope Mounting Alignment Bars

REQUEST FOR RECONSIDERATION OF HOLDING OF ABANDONMENT

(MPEP 711.03)

Hon. Comm. of Patents and Trademarks

Washington, D.C. 20231

Sir:

In response to the Notice of Abandonment issued on June 20, 1997 in regard to the above-identified application, Applicant hereby requests reconsideration of the holding of abandonment pursuant to MPEP 711.03.

A timely response to the outstanding Office Action of Nov. 12, 1996 was mailed from my office on Feb. 11, 1997. Enclosed is a true and exact copy of the response that was mailed on Feb. 11th. A certificate of mailing on Feb. 11, 1997, appears on the top of the first page of the response, certifying that I mailed the response on Feb. 11th as first class mail directed to the Comm. of Patents and Trademarks, Washington, DC 20237.

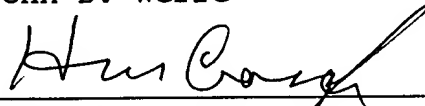
In view of the certificate of mailing, certifying that a timely response was mailed to the Patent Office on Feb. 11, 1997, please withdraw the holding of abandonment, reinstate the application, and act on the Feb. 11th response to the Office Action of Nov. 12, 1996.

Respectfully submitted,

John D. Werre

Date: June 27, 1997

By:


Harry M. Cross, Jr.
Reg. No. 22,229

P.O. Box 280
Missoula, MT 59806
406 728-5300

Exh. D

Box Non-Fee Amendment
Hon. Ass't Comm. for Patents
Washington, DC 20231

Dear Sir:

Please acknowledge receipt of the following by stamping the date of receipt on this card and mailing it.

1. Request for Reconsideration of Holding of Abandonment
2. Copy of Feb. 11, 1997 Response to Office Action of Nov. 12, 1996.

In re Application of Werre
Serial No.: 08/538,279 Filed: 10/02/95
Title: Telescope Mounting Alignment Bars
Atty File: 95-02-02
June 27, 1997



Exh E

